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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055094
Party	Plaintiff Swig, Inc.
Correspondence Address	JEFFREY A TINKER WINSTEAD PC 2728 N HARWOOD ST, 500 WINSTEAD BLDG DALLAS, TX 75201 UNITED STATES jtinker@winstead.com
Submission	Response to Board Order/Inquiry
Filer's Name	Janie Muennink
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Signature	/Janie Muennink/
Date	04/28/2014
Attachments	Notice_of_Status_of_Northern_District_of_Ohio.pdf(141666 bytes )

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Reg.	§	
No. 3,885,993.	§	
For the mark SWIG.	§	
Registered December 7, 2010.	§	
	§	
SWIG, INC.	§	
	§	
Petitioner,	§	
	§	
<b>v.</b>	§	Cancellation No. 92055094
	§	
TEMPERANCE DISTILLING	§	
COMPANY, INC.	§	
	§	
Respondent.	§	

## PETITIONER'S REPORT OF STATUS ON MOTION TO QUASH

Petitioner Swig, Inc. hereby submits the status report on the motion to quash, as follows:

- 1. Petitioner has received the attached order from the Northern District of Ohio court regarding Respondent's motion to quash Subpoenas By Written Questions to Molly and Brian Pearson.
- 2. The Northern District of Ohio court has denied Respondent's motion to quash in part and ruled that the answers by written questions of Molly and Brian Pearson, as provided to the court, are not privileged.
- 3. This status report is being timely filed in response to the Board's request for a status update dated April 11, 2014.

Petitioner respectfully requests the Board to remove this proceeding from suspension and reset the deadlines for discovery, and in resetting the deadlines, to extend Petitioner's testimony period by thirty (30) days, and for such other and further relief as the Board deems appropriate.

Respectfully submitted,

Date: April 28, 2014

WINSTEAD PC

/s/ Jeffrey A. Tinker

Jeffrey A. Tinker 500 Winstead Building 2728 N. Harwood Street Dallas, Texas 75201 Telephone: (214) 745-5400

Attorneys For Petitioner, Swig, Inc.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the above Notice has been served on the following counsel of record on this April 28, 2014, via Electronic Mail as follows:

Gregg W. Emch emch@mstfirm.com Joseph W. Tucker tucker@mstfirm.com MacMillan, Sobanski & Todd, LLC One Maritime Plaza, Fifth Floor 720 Water Street Toledo, Ohio 43604

/s/ Jeffrey A. Tinker
Jeffrey A. Tinker

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#### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

Swig, Inc.,

Case No. 3:13-mc-00088

Petitioner,

v.

ORDER

Temperance Distilling Company, Inc.,

Respondent.

Before me is the second motion of Temperance Distilling Company, Inc., to quash subpoenas to testify served by Swig, Inc., on Molly and Brian Pearson, who are former employees of Temperance. (Doc. No. 3). Temperance asserts I must quash the subpoenas pursuant to Rule 45(c)(3)(A) because the testimony Swig seeks would require the Pearsons to testify about the content of conversations the Pearsons had with Temperance's attorneys, and therefore would force the Pearsons to testify about matters protected by the attorney-client privilege. See Fed. R. Civ. P. 45(a)(3)(A)(iii) (issuing court must quash or modify a subpoena that requires disclosure of privileged material if no exception or waiver applies). I ordered the Pearsons to answer Swig's written deposition questions and then to submit notarized copies of their response to my chambers. (Doc. No. 7). The Pearsons timely complied with my order.

I have reviewed the Pearsons' responses and conclude those responses do not discuss any information which implicates the attorney-client or any other privilege. Therefore, I deny Temperance's motion to quash the subpoenas and direct the clerk's office to return the completed

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deposition questions to the office of Jones & Solomon. Thereafter, Joseph Solomon, counsel for the Pearsons, shall serve copies of the completed deposition questionnaires on Swig, Inc.

So Ordered.

s/ Jeffrey J. Helmick United States District Judge